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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,582	10/18/2001	John H. Niland	125536-1001	7597

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/982,582	NILAND, JOHN H.
	Examiner Tony G Soohoo	Art Unit 1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 6/2/20x3 TOS

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 11 and 12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 11 and 12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

**Claims 11 and 12, presented in the request for RCE on 6/2/03 are now pending.**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11 and 12 rejected under 35 U.S.C. 102(b) as being anticipated by the article of a 1996 Mercedes Benz 3234 B 8x4, as depicted for sale at <http://www.bosstruck.com/details.asp?tab=Mixer&reference=MX001JU015>, reference number MX001JU015, see attachment, total 5 pages.

The article of the cement mixer and the method of displaying the phrase "Ready for you." , fully satisfies the recited apparatus and method, whereby the cement mixer has a rotatable drum mounted on the motor truck, the concrete mixer drum including indicia comprising signage substantially axially on said drum and in a helical pattern with respect to the axis of rotation of the drum and the signage comprises alternate signs disposed on the circumference of the drum and extending axially on the drum and in a helical pattern, and the alternate signs are inverted with respect to each other so as to be readable in their entirety , respectively from opposite sides of the drum during rotation thereof, (in this case when the circle hatch reaches the top of the rotation, the alternate helical sign indicia of "Ready for you." , may be read from each side of the truck .



With regards to the method claim, note that the article of the 1996 Mercedes Benz 3234 B 8x4, displays the message "Ready for you." and the graphic "Readymix", whereby an over-the-road concrete mixer truck is provided and has a generally cylindrical concrete mixer drum mounted thereon for rotation about a longitudinal axis of the drum and indicia of "Ready for you.", is provided as signage which extends substantially axially and in a helical pattern with respect to the axis of rotation of the drum and the signage comprises alternate signs disposed on the circumference of the drum and extends axially and in a helical pattern which are inverted to each other so that it is readable in their entirety, respectively from opposite sides of the drum during rotation.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the article of a "MODEL 19 SERIES G PETERBULIT CEMENT TRUCK" –1985 MATCHBOX™ Australian collectors model limited edition, pink, white barrel, "Readymix" logo, an example as depicted on <http://www.ausbow.com.au/m19.gif>, and identified as number 353 in view of Rinzler 5507109 (previously cited).

Note:

MPEP 2144.04, I. states with regards to aesthetic changes .

2144.04 Legal Precedent as Source of Supporting Rationale  
As discussed in MPEP § 2144, if the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court. Examples directed to various common practices which the court has held normally require only ordinary skill in the art and hence are considered routine expedients are discussed below. If the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection.

**I. AESTHETIC DESIGN CHANGES**

In re Seid , 161 F.2d 229, 73 USPQ 431 (CCPA 1947) (Claim was directed to an advertising display device comprising a bottle and a hollow member in the shape of a human figure from the waist up which was adapted to fit over and cover the neck of the bottle, wherein the hollow member and the bottle together give the impression of a human body. Appellant argued that certain limitations in the upper part of the body, including the arrangement of the arms, were not taught by the prior art. The court found that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art

Note: the phrase "over-the road concrete mixer motor truck" fails to structurally distinguish a toy model of such a device whereby the claim fails to structurally claim a structural distinction which positively differentiates it from a toy such as a positive limitation of provision of a motor attached to the truck to drive the truck.

The article of a "MODEL 19 SERIES G PETERBULIT CEMENT TRUCK" -1985 MATCHBOX™ Australian collectors model limited edition, pink indicia, white barrel, "Readymix" logo, an example as depicted on <http://www.ausbow.com.au/m19.gif>,



teaches the provision and use of a cement truck whereby identifying indicia 15 (see the helically oriented indicia encompassed by the circle graphic) is provided on the drum 14 such that the truck may be easily identified.

The MATCHBOX™ article discloses all of the recited subject matter as defined within the scope of the claims with the exception of:

with the exception of the method and the corresponding article of a cement truck of providing the signage of alternate signs disposed on the circumference of the drum which are inverted with respect with each other so as to be readable from opposite sides of the drum during rotation.

The reference to Rinzler 5507109 teaches respective advertising indicia for the provision on the sides of a vehicle whereby the indicia is placed on one side and the other side is disposed in an opposite circumferential position of the vehicle body with the indicia is inverted with respect to the other so as to be readable from both sides of the vehicle.

In light of the teaching of Rinzler 5507109 that one may place indicia located opposite circumferential position of the vehicle body with the indicia is inverted with respect to the other so as to be readable from both sides of the vehicle, it is deemed that it would have been obvious to one of ordinary skill in the art to one may provide for an additional helical indicia so that there are two indicia located in an opposite circumferential position of the vehicle body with the indicia is inverted with respect to the other so as to be readable from both sides of the vehicle in order to easily identify the truck.

***Response to Arguments***

3. Applicant's arguments filed 12/17/02 have been fully considered but they are not persuasive.
4. Applicant's arguments with respect to claims 11 and 12 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose additional examples of graphics upon a mixer drum.

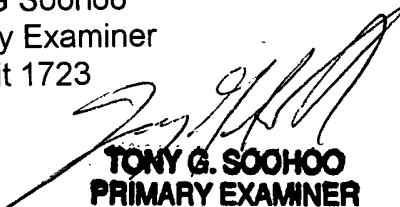
A picture of a collectable truck of BONANZA concrete, ACC #06, Bonanza, stock number #19-2593 taken from <Http://ghscollectibles.hypermart.net/> shows cowboy hats disposed in alternate orientation about the circumference of a cement mixer truck.

A picture of a cement truck, taken from <http://www.fleet-line.co.nz/wa.asp?idWebpage=1985&idDetails116> shows a cement truck having the graphic indicia of the Capital letter "A" in alternate inverted positions about the circumference of the mixer drum.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0661.

Tony G Soohoo  
Primary Examiner  
Art Unit 1723

tgs



TONY G. SOOHOO  
PRIMARY EXAMINER